

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

Plaintiff

v.

TROPICAL FRUIT, S.E.; AVSHALOM
LUBIN; CESAR OTERO ACEVEDO; and
PEDRO TOLEDO GONZALEZ

Defendants

Civil Action No. 97-1442-DRD

**OPPOSITION TO NOTICE OF DEFAULT AND REQUEST FOR EXTENSION
OF TIME TO FILE MOTION IN COMPLIANCE WITH ORDER TO SHOW CAUSE**

TO THE HONORABLE COURT:

COME NOW defendants, represented by the undersigned counsel, and very respectfully allege and pray:

1. On March 22, 2005, Plaintiff filed a Notice of Default (Docket No. 99) and tendered therewith the text of a Proposed Order holding defendants in contempt and requiring immediate compliance with the Consent Decree entered on October 25, 2001 (Docket No. 94). Plaintiff's motion is based on defendants' failure to file a response to the Court's February 8, 2005 Order to Show Cause (Docket No. 98), by the deadline of February 28, 2005. The appearing defendants, and their counsel, had not received actual notice of the Court's Order of February 8, 2005 until March 22, 2005 when Mr. Timothy M. Dunne, Paralegal Specialist from the US Department of Justice e-mailed the Notice of Default and the Proposed Form of Order to Mr. Jaime Sifre, Esq.

2. In the instant case, defendants have been represented at all times by Mr. Jaime Sifre, Esq. Nevertheless, on March 22, 2005 counsel for the appearing parties

became aware that since the start of the CM/ECF system, the notifications of the filings have been sent to Mr. Luis Sanchez-Betances, Esq. as he is mistakenly listed as lead attorney to be noticed in representation of defendants. Inadvertently, counsel for defendants had not been informed of the filings noticed to Mr. Sanchez-Betances, Esq. in the instant case until, upon receipt of the Notice of Default, the ECF Activity and its Notifications were checked.

3. The appearing parties' failure to comply with the Order to Show Cause by the February 28, 2005 is not the result of willfulness on the defendants' part, nor on that of their counsel. Defendants failed to comply with the deadline simply because they were completely unaware of it due to the mistake in the CM/ECF System's notifications. It is respectfully submitted that under such circumstances plaintiff's request for defendants to be held in contempt should be denied.

4. Defendants intend to comply with the Court's Order to Show Cause. Nevertheless, since March 18, 2005 and as of this date, Mr. Jaime Sifre, Esq. has been out of Puerto Rico and will return on March 28, 2005. Due to Mr. Sifre's absence, this motion is being filed on his behalf by the undersigned counsel. Upon Mr. Sifre's return, defendants hereby respectfully request an extension of time of twenty-one (21) calendar days, that is, until April 18, 2005, to file their motion in compliance with the Court's Order.

WHEREFORE, it is respectfully requested from this Honorable Court to deny Plaintiff's notice of default and, in turn, to grant defendants an extension of time of twenty (21) calendar days to be counted from March 28, 2005, that is, until April 18, 2005, to comply the Court's Order to Show Cause.

Respectfully submitted.

In San Juan, Puerto Rico, on this 24th day of March 2005.

I HEREBY CERTIFY that on March 24, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Mr. Henry Friedman, Esq., Environmental Enforcement Section, U. S. Department of Justice, PO Box 7611, Washington, D. C. 20044; Isabel Muñoz, Assistant United States Attorney, Federal Building, Room 452 Chardon Avenue, Hato Rey, Puerto Rico 00918.

I HEREBY CERTIFY that I have mailed by United States Postal Service the foregoing document to the following non CM/ECF participants: German A. González PO Box 190764 San Juan, PR 00919-0764.

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